

REMARKS

At the time of the Fourth Office Action dated April 6, 2010, claims 11-25 were pending in this application. Claim 11 has been rejected, and claims 12-25 have been withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b). Applicants have cancelled claims 12-25 and added new claims 26-36. Applicants respectfully submit that the present Amendment does not generate any new matter issue.

CLAIM 11 IS REJECTED UNDER 35 U.S.C. § 101

On pages 2 and 3 of the Fourth Office Action, the Examiner asserted that the claimed invention, as recited in claim 11, fails to meet the requirements of 35 U.S.C. § 101. This rejection is respectfully traversed.

At the outset, Applicants note that the Examiner has failed to allege or produce any substantial evidence to support a finding that the claimed invention is directed to one of the exceptions to statutory subject matter. See Bilski v. Kappos, __ U.S. __ (2010)("[t]he Court's precedents provide three specific exceptions to § 101's broad patent-eligibility principles: 'laws of nature, physical phenomena, and abstract ideas'" citing Diamond v. Chakrabarty, 447 U. S. 303, 308 (1980)).

1 Notwithstanding this lack of a finding as to the claimed invention being directed to one of
2 the exceptions to statutory subject matter under 35 U.S.C. § 101, the Examiner asserted the
3 following on pages 2 and 3 of the Fourth Office Action:

4 For example, a method claim that recites purely mental steps (e.g. can be performed by
5 mental process or human intelligence alone) would not qualify as a statutory process. To qualify
6 as a §101 statutory process, the claim should (1) positively recite another statutory class (e.g. thing
7 or product) to which it is tied (e.g. by identifying the apparatus that accomplishes the method
8 steps) or (2) positively recite the subject matter that is being transformed (e.g. by identifying the
9 material that is being changed to a different state).

10 As per Claim 11, Examiner asserts that said method steps could be performed by merely
11 mental steps (e.g. can be performed by mental process or human intelligence alone). Here,
12 Applicant does not adequately tie his/her steps to another statutory class to qualify as a §101
13 statutory process.
14

15 At the outset, Applicants note that there is no requirement that a claim *positively recite*
16 another statutory class. Notwithstanding, Applicants respectfully disagree with the Examiner's
17 assertion that "said method steps could be performed by merely mental steps." Notably, the
18 Examiner has failed to explain how these steps could be performed "by mental process or human
19 intelligence alone."
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21 For example, claim 11 recites "retrieving a message from the message queue" and "putting
22 the message into an execution queue." The message, given its broadest reasonable claim
23 construction consistent with Applicants' specification is a computer data structure. Additionally,
24 both the message queue and the execution are specific types of storage devices (i.e., queues). In
25 this regard, Applicants note that one having ordinary skill in the art would recognize that the
26 retrieval of a message from a message queue and the putting of the message into an execution
27 queue cannot be performed mentally. Instead, this steps must be performed by a computer
28 hardware device (in order to manipulate the computer data structures) that includes both the
29 message queue and the execution queue. As recited also recited in claim 11, "a server system

1 [has] a message queue." Thus, claim 11 clearly indicates that the message queue is part of a
2 server system (i.e., an example of a computer hardware device).

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4 Claim 11 also refers to a state table, which is a computer data structure stored as part of a
5 computer-readable storage medium.

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7 Therefore, claim 11 is not directed to an abstract idea. Instead, claim 11 is tied to a
8 particular machine and is directed to a statutory process within the meaning of 35 U.S.C. § 101.
9 For the above-described reasons, Applicants respectfully solicit withdrawal of the imposed
10 rejection of claim 11 under 35 U.S.C. § 101.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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